



**AGC of America**  
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**2006 Annual Convention & Expo**  
March 19-22, 2006 - Palm Springs

## **SALTING: TOP 10 LIST--TOP WAYS TO AVOID BEING HIT BY A PASSING COMET**

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### Employer Services Practice Group

#### Experience

Thomas Lenz is a partner in the Cerritos office of Atkinson, Andelson, Loya, Ruud & Romo and the head of the firm's Traditional Labor Law Department. Mr. Lenz works with employers from all major industries on labor and employment law matters with an emphasis on practice before the National Labor Relations Board. He has extensive experience in advising, training, and representing employers in unfair labor practice cases; representation election cases; union organizing campaigns including corporate campaigns and salting; collective bargaining; picketing; strikes; and related litigation.

Before joining the firm, Mr. Lenz practiced law with the National Labor Relations Board, Region 21, in Los Angeles, where the majority of his cases required fluency in the Spanish language. He received a formal commendation from NLRB's General Counsel for his performance.

#### Education

Mr. Lenz received his undergraduate degree from Marquette University and his Juris Doctor from Louisiana State University. He also participated in international study programs during college and law school.

#### Admission

1988, Illinois; 1991, California and U.S. District Court, Central District of California; 1992, U.S. District Court, Northern, Southern and Eastern Districts of California and U.S. Court of Appeals, Ninth Circuit; 1994, U.S. Supreme Court; 2002, U.S. Court of Appeals, District of Columbia Circuit.

#### Membership

Illinois State and American Bar Associations; State Bar of California. Chapter Counsel for, and member of, various Chapters of Associated Builders and Contractors in California.

#### Publications and Speaking Engagements

Mr. Lenz is a frequent author and speaker, and is regularly consulted by the media as an expert on labor and employment law topics.

## TOP 10 LIST--TOP WAYS TO AVOID BEING HIT BY A PASSING COMET

by Thomas A. Lenz, Partner  
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Unions across the country are training members to seek employment with nonunion employers. These Union members use applications or employment with targeted employers as a tool to provoke targeted employers into taking potentially illegal action. This practice is called “salting” and the participants are “salts.” Unions like the IBEW call their salting program “COMET.”

Union salts rely on government agencies like the National Labor Relations Board (“NLRB”) to pursue legal complaints against targeted companies. Salts want to run up targeted employers’ legal fees and liabilities to run employers out of business unless they will agree to sign a union agreement. The NLRB and the Courts have declared salting to be a lawful form of union organizing activity.

If you are a nonunion employer, salts may seek you out at any time. You cannot prevent this. However, you can prepare yourself to meet the challenge and limit potential liabilities. Ten (10) tips follow.

NUMBER 10: BE CONSISTENT IN HOW YOU DEAL WITH APPLICANTS AND EMPLOYEES.

If you treat people in different ways for no valid reason, that is discrimination. Make no exceptions. Discrimination against Union activists is illegal. Discrimination charges fuel salting campaigns.

NUMBER 9: HIRE THE MOST QUALIFIED APPLICANT. IT MIGHT BE A SALT.

Apply the same standards for all applicants, regardless of whether applicants identify themselves as union adherents. If you don't, it could be unlawful discrimination.

NUMBER 8: USE A CAREFUL APPLICATION PROCESS.

Consider applicants' experience, abilities, and references. Consider work-related aptitude tests. Use an application that asks good and lawful questions. Give your application a standard life period. Do not accept incomplete applications or alternatives to your standard applications. Avoid same day hires. Check references and look for holes. In person applications and interviews are encouraged so you know who you hire.

NUMBER 7: IMPLEMENT A NO FALSIFICATION/NO OMISSION POLICY.

Expect lies. The IBEW has told salts it's o.k. to lie. Use a good application, which explicitly provides that falsifications and omissions are cause for 1) disqualification of an application or 2) if hired, termination upon discovery. Review applications, resumes, references, employment histories, and qualifications carefully.

NUMBER 6: IMPLEMENT AND FOLLOW A NO-SOLICITATION POLICY.

Salts love to talk about the Union during working time. If you prohibit other solicitation and distribution during working time, you can do the same with salts. Note, generally, you cannot limit employees' solicitations and distributions during break and lunch times.

- NUMBER 5: SALTS CAN BE DISCIPLINED.  
They want to scare you into believing that their Union activity prevents you from following your own lawful rules. Don't be misled. Salts are subject to the same disciplinary rules as everyone else. If a salt does not do his job, you have recourse.
- NUMBER 4: LAY OFF WHEN WORK ENDS.  
If you run out of work, and you do not ordinarily transfer people to other jobs, you may be able to lay off. If your layoffs turn on the length of time an employee is with the company, or skills, etc., you should follow the same standards consistently.
- NUMBER 3: DOCUMENT EVERYTHING.  
Your defense requires proof, including job applications, resumes, classified ads, performance problems, customer complaints, discipline, workload, layoffs, and termination. Photograph defective work. Documents often have more credibility than the spoken word.
- NUMBER 2: BE CALM. REMEMBER "T-I-P-S."  
Employers who fall victim to COMET usually do so because salts provoke them to say or do the wrong thing. Mid-level supervision is especially vulnerable. All supervision must know and follow the rules. Don't lose your temper. Think about what you say before you say it. If you want to say something out of frustration, think again. It may be illegal. Under NLRB rules, things that happen later to the salt may be considered illegal because of a single comment. You need not remain silent. You can lawfully state your opinion of unions to employees and describe your own experiences. The key is to avoid:

THREATS  
INTERROGATION  
PROMISES  
SPYING

NUMBER 1:      **ACCEPT NOTHING IN WRITING FROM THE UNION.**  
If a Union faxes or mails you a letter, or a salt or Union representative hands you cards or letters, refuse them. If possible, do not open them. Such materials should be sent back. If you accept and review the documents your company may have legally bound itself to recognize and bargain with the Union.

Please note: Each situation is different for legal analysis. These are general guidelines and not legal advice. Consult labor counsel on issues that confront you.